GAN HOE & ANOR.

v.

GOLDEN CENTURY DEVELOPMENT SDN. BHD. & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMMED J
[CIVIL SUIT NO. 99 OF 1980]
26 NOVEMBER 1980

CIVIL PROCEDURE: Specific performance - *Application to set aside proceedings - Writ and statement of claim disclosed no cause of action - Order 18 r. 19(2) RHC and r. 10(3), 12 Housing Developers (Control and Licensing) Rules 1970.*

The defendants - Housing Developers applied to set aside the whole proceedings of the plaintiff as the writ of summons and the statement of claim for specific performance did not disclose a cause of action and was unlikely to succeed. They filed two affidavits and various documents in support of their applications.

The plaintiffs' Counsel objected to the affidavits and the documents on the ground that no evidence should be admitted in support of the application. The objection was upheld by the learned Judge who disregarded the affidavits and the documents.

The 1st plaintiff had agreed to buy the land in question and paid RM1,000 as deposit and part payment. Subsequently the 1st plaintiff assigned his interests and rights to 2nd plaintiff for a consideration of RM2,000. The assignment was recognised by the defendants. The defendants sent an agreement to the 2nd plaintiff which contained many new clauses not included in the previous draft shown to the 1st plaintiff to sign but the same was not executed. In the meantime the 1st defendant transferred the whole building operations to the 2nd defendant.

Defendants contended that there was no normal agreement as plaintiff had refused to execute the agreement and this was contrary to the Housing Developers (Control and Licensing) Rules.

Held:

[1] The agreement gave rise to a legally binding contract between the parties, although the terms had yet to be agreed and to be evidenced in writing as required under r. 12(1) of the Rules. In this case the plaintiff had paid his deposit towards the purchase of the accommodation, accompanied with the draft agreement shown to the plaintiff. Rule 10(3) imposes an irrevocable option to the plaintiff giving him the right to purchase.

[2] The Housing Developers (Control and Licensing) Rules 1970 is designed to control developers and to protect *bona fide* purchasers of housing accommodations as provided under r. 10

[3] On the face of it, the writ and the statement of claim disclosed a cause of action.

[Defendant's application dismissed with costs. Defence to be filed within 21 days from the date of the order.]

Legislation referred to:
Housing Developers (Control and Licensing) Rules 1970, rr. 10, (3), 12(1)

For the plaintiffs - John Ang & Co.
For the defendants - Nathan & Yang

(Digest Form Only)

Also found at [1981] CLJ 89